

REMARKS

As an initial matter, Applicants gratefully acknowledge courtesies extended by Dr. Nguyen and his supervisor during a telephonic interview on October 11, 2005. During the interview, the undersigned and the Examiners discussed the instant Notice of Non-Compliance (dated September 7, 2005, hereinafter "Notice"). It was understood from the discussion that the alleged informality set forth in the Notice is the only basis of non-compliance at this time. If this is not the case, the undersigned would most appreciate a telephone call at the Examiners' earliest convenience.

According to the Notice, the replies of June 14, 2005 and November 4, 2004 are not fully responsive to the prior office action on grounds that Applicants failed to address a provisional obviousness-type double patenting rejection over claims of co-pending application 10/714,574.

As an initial matter, Applicants wish to point out that since the obviousness-type double patenting rejection is provisional, they should be under no burden to reply until the rejection is made on the record. Indeed, 37 CFR 1.111(b) provides that Applicant's reply must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of **objection and rejection** in the prior Office Action. A provisional double-patenting rejection based on a co-pending patent application is neither an objection nor a rejection. Accordingly, Applicant is should not be under a burden to response if and until the provisional rejection matures into a rejection based on the co-pending application if at all. For this reason alone, the present Notice of Non-Compliance is improper.

Nevertheless, Applicants did respond to the instant provisional obviousness-type double patenting rejection in the prior response dated November 4, 2004, particularly at pg. 8, first full paragraph under the heading "Double Patenting".

In the event the Office deems this response to the provisional double-patenting rejection unresponsive, Applicants respond as follows.

Claims 50, 52, 55-63, 65-68, 70, 82-83 stand provisionally rejected in view claims 1-23 of co-pending application USSN 10/714,574. Applicants respectfully traverse the provisional rejection.

For instance, the provisional rejection cannot stand in view of the amendments to claim 50 introduced in the prior response. Additionally, claims 1-23 of co-pending application USSN 10/714,475 have been canceled (see the preliminary amendment filed on July 16, 2004).

In view thereof, Applicants have responded fully to the instant Notice. Consideration of the present application on the merits is respectfully requested.

Applicants have included a Petition For Extension of Time and Requisite Fee to consider this submission. Although it is not believed that any fee is needed to consider this submission, the Examiner is authorized to charge our Deposit Account No. 04-1105 should such fee be deemed necessary.

Date:

18 Oct. 2005

Respectfully submitted,



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